Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE RESOLUTION 117

At the request of Mr. ROTH, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Resolution 117, a resolution expressing the sense of the Senate that the current Federal income tax deduction for interest paid on debt secured by a first or second home located in the United States should not be further restricted.

## SENATE RESOLUTION 142—TO CONGRATULATE THE NEW JERSEY DEVILS

Mr. LAUTENBERG (for himself and Mr. BRADLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 142

Whereas on October 5, 1982, the New Jersey Devils played their first National Hockey League game in New Jersey, embarking on a quest for the Stanley Cup which was satisfied 13 years later;

Whereas the Devils epitomize New Jersey pride with their heart, stamina, and drive and thus have become a part of New Jersey culture;

Whereas the New Jersey Devils won 10 games on the road during the Stanley Cup playoffs, thus demolishing the previous record;

Whereas the Devils have implemented an ingenious system known as the ''trap'' that was designed by head coach Jacques Lemaire which constantly stifled and frustrated their opponents;

Whereas Conn Smythe trophy winner Claude Lemieux led the league with 13 playoff goals, three of which were game-winners, and goalie Martin Brodeur led the league with a 1.67 goals-against average during the playoffs;

Whereas the New Jersey hockey fans are the best fans in the nation and deserve commendation for helping build the team into championship caliber and for supporting the Devils during their drive for the Stanley Cup;

Whereas the New Jersey Devils during the playoffs beat Boston, Pittsburgh, Philadelphia and in the finals swept the heavily favored Detroit Red Wings in four games giving the state of New Jersey its first-ever championship for a major league team officially bearing the state's name: Now, therefore, be it

*Resolved*, That the Senate congratulates the New Jersey Devils for their outstanding discipline, determination, emotion, and ingenuity, in winning the 1995 NHL Stanley Cup.

## AMENDMENTS SUBMITTED ON JUNE 26, 1995

## THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

### BRYAN AMENDMENT NO. 1474

Mr. BRYAN proposed an amendment to the bill (S. 240) to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act; as follows:

On page 127, strike line 20 and all that follows through page 128, line 15, and insert the following:

**SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AIDING AND ABETTING.**

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(n) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (b) and (d), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation promulgated under this title, shall be deemed to violate such provision to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 20 of the securities exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by adding at the end the following new subsection:

''(e) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of paragraphs (1) and (3) of section 21(d), or an action by a self-regulatory organization, or an express or implied private right of action arising under this title, any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation promulgated under this title, shall be deemed to violate such provision and shall be liable to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person.''; and

(2) by striking the section heading and inserting the following:

**''SEC. 20. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID OR ABET VIOLATIONS.''.**

(c) INVESTMENT COMPANY ACT OF 1940.—Section 42 of the Investment Company Act of 1940 (15 U.S.C. 81a–41) is amended by adding at the end the following new subsection:

''(f) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (d) and (e), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule, regulation, or order promulgated under this title, shall be deemed to violate such provision to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 209(d) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended)

(1) in subsection (d)—

(A) by striking ''or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation,''; and

(B) by striking ''or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice''; and

(2) by adding at the end the following new subsection:

''(f) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (d) and (e), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule, regulation, or order promulgated under this title, shall be deemed to violate such provision to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of duty owed by such person.''.

### BOXER (AND BINGAMAN) AMENDMENT NO. 1475

Mrs. BOXER (for herself and Mr. BINGAMAN) proposed an amendment to the bill, S. 240, supra; as follows:

On page 98, strike line 3, and all that follows through page 100, line 22, and insert the following:

''(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) or (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

''(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

''(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

''(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class.''

On page 102, strike line 3, and all that follows through page 104, line 22, and insert the following:

''(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) or (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

''(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

''(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

''(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class.''.

## AMENDMENTS SUBMITTED ON JUNE 27, 1995

## THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

### D'AMATO AMENDMENT NO. 1476

Mr. D'AMATO proposed an amendment to the bill (S. 240) to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act; as follows:

On page 121, line 1, delete the word ''expectation,''.

### SARBANES (AND LAUTENBERG) AMENDMENT NO. 1477

Mr. SARBANES (for himself and Mr. LAUTENBERG) proposed an amendment to the bill S. 240, supra; as follows:

Beginning on page 112, strike line 1 and all that follows through page 126, line 14, and insert the following:

**SEC. 105. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.**

(a) CONSIDERATION OF REGULATORY OR LEGISLATIVE CHANGES.—In consultation with investors and issuers of securities, the Securities and Exchange Commission shall consider adopting or amending rules and regulations of the Commission, or making legislative recommendations, concerning—

(1) criteria that the Commission finds appropriate for the protection of investors by which forward-looking statements concerning the future economic performance of an issuer of securities registered under section 12 of the Securities Exchange Act of 1934 will be deemed not be in violation of section 10(b) of that Act; and

(2) procedures by which courts shall timely dismiss claims against such issuers of securities based on such forward-looking statements if such statements are in accordance with any criteria under paragraph (1).

(b) COMMISSION CONSIDERATIONS.—In developing rules or legislative recommendations in accordance with subsection (a), the Commission shall consider—

(1) appropriate limits to liability for forward-looking statements;

(2) procedures for making a summary determination of the applicability of any Commission rule for forward-looking statements early in a judicial proceeding to limit protracted litigation and expansive discovery;

(3) incorporating and reflecting the scienter requirements applicable to implied private actions under section 10(b); and

(4) providing clear guidance to issuers of securities and the judiciary.

(c) SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 73a et seq.) is amended by inserting after section 13 the following new section:

**''SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.**

''(a) IN GENERAL.—In any implied private action arising under this title that alleges that a forward-looking statement concerning the future economic performance of an issuer registered under section 12 was materially false or misleading, if a party making a motion in accordance with subsection (b) requests a stay of discovery concerning the claims or defenses of that party, the court shall grant such a stay until the court has ruled on the motion.

''(b) SUMMARY JUDGMENT MOTIONS.—Subsection (a) shall apply to any motion for summary judgment made by a defendant asserting that a forward-looking statement was within the coverage of any rule which the Commission may have adopted concerning such predictive statements, if such motion is made not less than 60 days after the plaintiff commences discovery in the action.

''(c) DILATORY CONDUCT; DUPLICATIVE DISCOVERY.—Notwithstanding subsection (a) or (b), the time permitted for a plaintiff to conduct discovery under subsection (b) may be extended, or a stay of the proceedings may be denied, if the court finds that—

''(1) the defendant making a motion described in subsection (b) engaged in dilatory or obstructive conduct in taking or opposing any discovery; or

''(2) a stay of discovery pending a ruling on a motion under subsection (b) would be substantially unfair to the plaintiff or to any other party to the action.''.

### SARBANES (AND LAUTENBERG) AMENDMENT NO. 1478

Mr. SARBANES (for himself and Mr. LAUTENBERG) proposed an amendment to the bill S. 240, supra; as follows:

On page 114, strike lines 7 and 8, and insert the following:

''(1) made with the actual knowledge that it was false or misleading;

On page 121, strike lines 1 and 2, and insert the following:

''(1) made with the actual knowledge that it was false or misleading;

### GRAHAM AMENDMENT NO. 1479

Mr. GRAHAM proposed an amendment to the bill S. 240, supra; as follows:

On page 104, after line 22, insert the following:

(c) EARLY EVALUATION PROCEDURES.—

(1) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

''(j) EARLY EVALUATION PROCEDURES IN CLASS ACTIONS.—

''(1) IN GENERAL.—In a private action arising under this title that is filed as a class action pursuant to the Federal Rules of Civil Procedure, if the class representatives and each of the other parties to the action agree and any party so requests, or if the court upon motion of any party so decides, not later than 60 days after the filing of the class action, the court shall order an early evaluation procedure. The period of the early evaluation procedure shall not extend beyond 150 days after the filing of the first complaint subject to the procedure.

''(2) REQUIREMENTS.—During the early evaluation procedure described under paragraph (1)—

''(A) defendants shall not be required to answer or otherwise respond to any complaint;

''(B) plaintiffs may file a consolidated or amended complaint at any time and may dismiss the action or actions at any time without sanction;

''(C) unless otherwise ordered by the court, no formal discovery shall occur, except that parties may propound discovery requests to third parties to preserve evidence;

''(D) the parties shall evaluate the merits of the action under the supervision of a person (hereafter in this section referred to as the 'mediator') agreed upon by them or designated by the court in the absence of agreement, which person may be another district court judge, any magistrate-judge or a special master, each side having one peremptory challenge of a mediator designated by the court by filing a written notice of challenge not later than 5 days after receipt of an order designating the mediator;

''(E) the parties shall promptly provide access to or exchange all nonprivileged documents relating to the allegations in the complaint or complaints, and any documents withheld on the grounds of privilege shall be sufficiently identified so as to permit the mediator to determine if they are, in fact, privileged; and

''(F) the parties shall exchange damage studies and such other expert reports as may be helpful to an evaluation of the action on the merits, which materials shall be treated as prepared and used in the context of settlement negotiations.

''(3) FAILURE TO PRODUCE DOCUMENTS.—Any party that fails to produce documents relevant to the allegations of the complaint or complaints during the early evaluation procedure described in paragraph (1) may be sanctioned by the court pursuant to the Federal Rules of Civil Procedure. Notwithstanding paragraph (2), subject to review by the court, the mediator may order the production of evidence by any party and, to the extent necessary properly to evaluate the case, may permit discovery of nonparties and depositions of parties for good cause shown.

''(4) EVALUATION BY THE MEDIATOR.—

''(A) IN GENERAL.—If, at the end of the early evaluation procedure described in paragraph (1), the action has not been voluntarily dismissed or settled, the mediator shall evaluate the action as being—

''(i) clearly frivolous, such that it can only be further maintained in bad faith;

''(ii) clearly meritorious, such that it can only be further defended in bad faith; or

''(iii) described by neither clause (i) nor clause (ii).

''(B) WRITTEN EVALUATION.—An evaluation required by subparagraph (A) with respect to the claims against and defenses of each defendant shall be issued in writing not later than 10 days after the end of the early evaluation procedure and provided to the parties. The evaluation shall not be admissible in the action, and shall not be provided to the court until a motion for sanctions under paragraph (5) is timely filed.

''(5) MANDATORY SANCTIONS.—

''(A) CLEARLY FRIVOLOUS ACTIONS.—In an action that is evaluated by the mediator under paragraph (4)(A)(i), upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of rule 11(b) of the Federal Rules of Civil Procedure.

''(B) MANDATORY SANCTIONS.—If the court makes a finding under subparagraph (A) that a party or attorney violated any requirement of rule 11(b) of the Federal Rules of